

UNRECORDED ORIGINAL

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT 31 2001

In the Matter of )  
)

Petition for Rule Making to Modify  
Channel Allotment for Television Station  
KXLf-DT, Butte, Montana )  
(Amendment of Section 73.622(b)  
Table of Allotments,  
Digital Television Broadcast Stations  
(Butte, Montana)) )

MM Docket No. \_\_\_\_\_  
RM-10172

Petition for Rule Making )  
to Modify Channel Allotment )  
for Television Station KECI-DT )  
(Missoula, Montana) )

MM Docket No. \_\_\_\_\_  
RM-10172

To: Chief, Video Division  
Media Bureau

**JOINT REQUEST**  
**TO WITHDRAW REQUEST TO DENY AND RELATED FILINGS**

KXLf Communications, Inc. ("KXLf"), licensee of KXLf-TV (Butte, Montana), and Eagle Communications, Inc. ("Eagle"), licensee of KECI-TV, (Missoula, Montana), by their attorneys and pursuant to the Commission's rules,<sup>1</sup> respectfully request that the Commission grant this joint request to withdraw Eagle's Request to Deny and Eagle's and KXLf's related filings<sup>2</sup> regarding the above-referenced petitions for rulemaking to amend the digital television table of allotments (the "Joint Request").

Noted by sec'd 016  
10/31/01

<sup>1</sup> See 47 C.F.R. §§ 73.3588, 73.623(g) (2001).

<sup>2</sup> In response to Eagle's Request to Deny, on August 22, 2001, KXLf filed an Amendment and Supplement to the KXLf Petition and a Motion to Strike the Eagle Request to Deny (the "KXLf Motion to Strike"). On August 31, 2001, Eagle filed a Motion for Extension of Time In Which To Respond to the KXLf Motion to Strike, and on September 7, 2001, Eagle filed an Opposition

On January 10, 2001, KXLF filed a petition for rule making proposing to substitute Channel 5 for Channel 15 for use by KXLF-DT (the "KXLF Petition"). On March 21, 2001, Eagle filed a petition for rule making also proposing to substitute Channel 5 for Channel 13 use by KECI-DT, Missoula, Montana (the "Eagle Petition"). On August 7, 2001, Eagle filed a Request to Deny KXLF Communications, Inc. Petition for Rulemaking (the "Eagle Request to Deny"), and KXLF and Eagle filed subsequent related pleadings.<sup>3</sup> KXLF's proposed operation of KXLF-DT on Channel 5 in Butte and Eagle's proposed operation of KECI-DT on Channel 5 at Missoula, Montana were considered to be mutually exclusive. The Commission has not yet released a Notice of Proposed Rule Making in response to either petition for rule making.

On October 3, 2002, KXLF filed an Engineering Statement to Amend the KXLF Petition, which proposes to modify the center of radiation and effective radiated power for KXLF-DT's proposed facilities on Channel 5. **As** a result of the amendment, KXLF's proposed substitution of Channel 5 for Channel 15 for use by KXLF-DT and Eagle's proposed substitution of Channel 5 for Channel 13 for use by KECI-DT are mutually compatible according to the Commission's technical standards and thus are no longer mutually exclusive. Therefore, Eagle hereby withdraws the Eagle Request to Deny and related pleadings, and KXLF hereby withdraws the KXLF Motion to Strike and related pleadings. Attached as Exhibit 1 is a declaration by Eagle and attached as Exhibit 2 is a declaration by KXLF, each stating that the party has not received any consideration or promise of consideration in exchange for withdrawing its pleadings.<sup>4</sup>

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to Motion to Strike (the "Eagle Opposition"). On September 20, 2001, KXLF filed a Reply to the Eagle Opposition (the "KXLF Reply to Eagle Opposition."). By this Joint Request, the parties request Commission approval to withdraw these filings.

<sup>3</sup> *See id.*

<sup>4</sup> **As a** result of a mutually beneficial arrangement for the lease by Eagle of space on a tower owned by a company under common ownership with KXLF, **and prior** to the recent amendment

The Commission consistently has stated that it intended “to provide broadcasters with the flexibility to develop alternative [DTV] allotment approaches.”<sup>5</sup> Acknowledging that the implementation of digital television would be a dynamic process, the Commission encouraged voluntary broadcaster negotiation and coordination efforts in modifying the DTV Table of Allotments and stated that “[p]arties should be afforded as much flexibility as possible so they may address situations that may be unique to their particular circumstances.”<sup>6</sup> KXLF’s and Eagle’s petitions for rulemakings and the Joint Request reflect the voluntary efforts of the parties to improve the DTV Table of Allotments and enhance the new digital television broadcast services for Butte and Missoula, Montana and the surrounding communities. Grant of the Joint Request would serve the public interest by facilitating the processing of these channel change proposals and would conserve Commission resources.

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to the KXLF Petition, the parties had discussed a possible agreement under which Eagle would have accepted interference in excess of *de minimis*. With KXLF’s unilateral and voluntary amendment of its proposal, which eliminated the interference in excess of *de minimis* to Eagle’s proposed Channel 5 allotment, the interference consent agreement became unnecessary. The parties have nonetheless proceeded with the tower lease arrangement as a separate and independent matter, but not in consideration for the withdrawal of the filings described in this Joint Request.

<sup>5</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket 87-268, 13 FCC Rcd 7418 at ¶187.

<sup>6</sup> *Id.* at ¶147 (1998). See generally, *id.* at ¶¶141, 146-147, and *Sixth Report and Order*, 12 FCC Rcd 14588 at ¶182 (1997).

Therefore, in view of the foregoing, KXLF and Eagle respectfully request that the Commission grant this Joint Request by approving the withdrawal of the Eagle Request to Deny and Eagle's and KXLF's related pleadings, and promptly initiate rule making proceedings to amend Section 73.622(b) of its Rules to substitute Channel 5 for Channel 15 for use by KXLF-DT in Butte, Montana, and to substitute Channel 5 for Channel 40 for use by KECI-DT, Missoula, Montana.

Respectfully submitted,

**EAGLE COMMUNICATIONS, INC.**

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Arthur B. Goodkind

Its Attorney

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**KXLF COMMUNICATIONS, INC.**

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Dated: October 30, 2002

**Joint Request Exhibit 1**

**EAGLE DECLARATION**

## DECLARATION

Eagle Communications, Inc. ("Eagle"), hereby declares as follows:

1. Eagle is the licensee of television station KECI-TV, Missoula, Montana (Facility Identification Number 18084).

2. On March 21, 2001, Eagle filed a Petition for Rulemaking ("Petition") to amend the digital television table of allotments by substituting Channel 5 for Channel 40 for use by KECI-DT. Missoula. Montana.

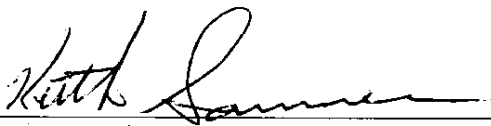
3. On August 7, 2001, Eagle filed a Request to Deny KXLF Communications, Inc. Petition for Rulemaking proposing to substitute Channel 5 for Channel 15 for use by KXLF-DT in Butte, Montana (the "Request to Deny"). On August 31, 2001, Eagle filed a Motion for Extension of Time In Which To Respond to the KXLF Motion to Strike (the "Motion for Extension of Time"), and on September 7, 2001, Eagle tiled an Opposition to Motion to Strike (the "Opposition") in response to the Motion to Strike Eagle Communications, Inc.'s Request to Deny Petition for Rule Making filed by KXLF Communications, Inc.

3. Eagle herewith requests that the Commission dismiss its Request to Deny, Motion for Extension of Time, and Opposition. Eagle's Request to Deny and Opposition were not filed for the purpose of reaching or carrying out a settlement agreement.

4. Other than as set forth in the Joint Request to Withdraw Request to Deny and Related Filings by Eagle and KXLF Communications, Inc., neither Eagle nor any of its principals has paid, received, promised, or been promised any other consideration in connection with the dismissal of its Request to Deny, Motion for Extension of Time, and Opposition, and neither Eagle nor any of its principals has entered into any oral or written agreement with any party regarding the dismissal of its Request to Deny, Motion for Extension of Time, and Opposition.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2002.

**EAGLE COMMUNICATIONS, INC.**

By:   
Name: Keith Sommer  
Title: Vice-President/General Manager

**Joint Request Exhibit 2**

**KXLF DECLARATION**

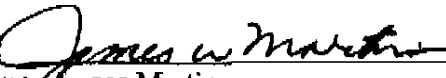
## DECLARATION

KXLF Communications, Inc. ("KXLF"), hereby declares as follows:

- 1 KXLF is the licensee of television station KXLF-TV, Butte, Montana (Facility Identification Number 35959).
- 2, On January 10, 2001, KXLF filed a Petition for Rulemaking ("Petition") to amend the digital television table of allotments by substituting Channel 5 for Channel 15 for use by KXLF-DT, Butte, Montana.
3. On August 22, 2001, KXLF filed a Motion to Strike Eagle Communications, Inc.'s Request to Deny Petition for Rule Making (the "Motion to Strike"). On September 20, 2001, KXLF filed a Reply to Opposition to Motion to Strike Eagle Communications, Inc.'s Request to Deny Petition for Rule Making (the "Reply to Opposition").
4. KXLF herewith requests that the Commission dismiss its Motion to Strike and Reply to Opposition. KXLF's Motion to Strike and Reply to Opposition were not filed for the purpose of reaching or carrying out a settlement agreement.
5. Other than as set forth in the Joint Request to Withdraw Request to Deny and Related Filings by KXLF and Eagle Communications, Inc., neither KXLF nor any of its principals has paid, received, promised, or been promised any other consideration in connection with the dismissal of its Motion to Strike and Reply to Opposition, and neither KXLF nor any of its principals has entered into any oral or written agreement with any party regarding the dismissal of its Motion to Strike and Reply to Opposition.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2002.

KXLF COMMUNICATIONS, INC.

By   
Name: James Martin  
Title: Treasurer